APPEAL NO. 031157
FILED JUNE 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 10, 2003. The hearing officer determined that appellant (claimant) is entitled to reimbursement for travel expenses to Dr. R on September 16, 2002, in the total amount of $44.35, and to no other reimbursement for travel between April 15, 2002, and December 30, 2002. Claimant appealed these determinations, contending that he is entitled to travel reimbursement. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant lives in (city) and sought reimbursement for travel expenses to a city more than 20 miles from his residence. Claimant testified that there is only one chiropractor in his town and that that doctor does not take workers' compensation cases. When asked how he knew this information, claimant indicated that a friend told him and also said "I don't know." When asked if he looked for other doctors to treat him closer to his residence, claimant indicated that he had made some effort and then gave up. He said that after that, he did not check the telephone book, call the Texas Workers' Compensation Commission for a list of doctors, or otherwise check to see what treatment was available closer to home. The hearing officer determined that, "[c]laimant failed to produce probative evidence" that medical treatment for the compensable injury is not reasonably available within 20 miles of the injured employee's residence. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6). We agree that claimant offered essentially no evidence of this. He testified regarding his beliefs about whether other treatment was available, but clearly had not made more than a few attempts to verify what medical treatment for the compensable injury was reasonably available within 20 miles of his residence. As we said in Texas Workers' Compensation Commission Appeal No. 022547, decided November 7, 2002, "[t]he hearing officer may conclude that telephoning a handful of doctors in the area does not make the case for medical treatment not being available within the 20-mile limit."

We are concerned with the hearing officer's statement in the decision regarding what proof is necessary to meet the claimant's burden in this case. The hearing officer stated that "as a matter of law," a claimant's testimony alone may never satisfy the burden of proof. Rule 134.6 does not contain any evidentiary requirement regarding necessary evidence to meet the claimant's burden. Certainly, a claimant would be well served to offer supporting evidence showing that that medical treatment for the compensable injury is not reasonably available within 20 miles of the claimant's residence. A claimant who does not offer such evidence is taking a risk that the hearing officer may determine that the burden of proof has not been met. However, we decline

to hold that “as a matter of law,” a claimant who testifies regarding research done in this regard cannot meet the burden of proof. One claimant giving just such testimony was found to have met the burden of proof, and the appeals panel affirmed that determination. *See* Texas Workers' Compensation Commission Appeal No. 012309, decided November 9, 2001. We note that Texas Workers' Compensation Commission Appeal No. 011574, decided August 23, 2001, cited by carrier, does not support the proposition that “as a matter of law,” the unsupported testimony of a claimant can never meet the burden to prove that medical treatment for the compensable injury is not reasonably available within 20 miles of the injured employee's residence. In Appeal No. 012309, the Appeals Panel said:

> In reviewing the record, we note that there were no medical reports nor documentation in evidence to support the claimant's contention that post-surgery follow-up care by his treating doctor was reasonably necessary, *when there was evidence in the record of reasonably available medical treatment within 20 miles* of the claimant's residence. (We note that such evidence from the treating doctors might have sufficed but was not presented.)
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> The claimant's testimony does not support entitlement to travel expenses *when medical treatment was reasonably available within 20 miles of the claimant's residence*. [Emphasis added.]

Appeal No. 012309 indicates that a claimant who merely testifies that his treatment is reasonable and necessary has not met his burden under Rule 134.6, especially where the *carrier has offered evidence* showing that the treatment *was* available within 20 miles. Appeal No. 012309 does not say that, as a matter of law, a hearing officer can never believe the testimony of a claimant alone, regarding the availability of medical treatment, or that supporting evidence is always required.

Despite the evidentiary error in this case, we conclude that there is no reversible error. There is essentially no evidence of whether medical treatment for the compensable injury is reasonably available within 20 miles of the injured employee's residence.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

_____
Judy L. S. Barnes
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Edward Vilano
Appeals Judge